IN THE HIGH COURT OF JUDICATURE AT JABALPUR, M.P.

WRIT PETITION NO. 3644 OF 1997

PETITION UNDER ARTICLE 227 OF CONSTITUTION OF INDIA

PETITIONER :- Mukhtar Singh S/o Ujagar Singh aged about 52 years Senior Technician Coke Oven G.M.G.(General Maint ainance Ground) Bhilai Steel Plant Bhilai ~~xxxxxx~~ Quarter No.4-A, Street No.4 Sector No.4, Bhilai Nagar, Bhilai District Durg,M.P.

V E R S U S

RESPONDENTS :- 1. S-teel Authority of India Ltd. Through Managing Director Bhilai S-teel Plant Bhilai District Durg, M.P.

2. Labour Court, Through its Presiding Officer Utai Road Durg, District Durg, M.P.

3. Industrial Court of M.P. (Bench at Raipur) Krishna Sadan 16 H.I.G. Shankar Nagar Raipur, District Raipur, M.P.

4.

DETA-ILS OF PETITIONER

APR (101)

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION No. 3644 OF 1997

Mukhtar Singh

Versus

Steel Authority of Inida Limited and others

ORDER

Seen 8/8/05

Seen 8/8/05

8/8/05

Post for 08-08-2005

Sd/-
Sunil Kumar Sinha
Judge

(102)

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION No. 3644 OF 1997

Mukhtar Singh

Versus

Steel Authority of Inida Limited and others

Appearance:

Shri H.B. Agrawal, Sr. Advocate with Shri Pankaj Agrawal, counsel for the petitioner.

Dr. N.K. Shukla, Sr. Advocate with Shri Shailendra Shukla, counsel for respondent No. 1

None for respondents No. 2 & 3

O R D E R
(08-08-2005)

Sunil Kumar Sinha, J.

By way of this writ petition, filed under Article 226/227 of the Constitution of India, the petitioner has challenged the legality of the order dated 28.06.1997 passed in appeal case no. 247/MPIR/96 by the member Judge of Industrial Court Madhya Pradesh, Bench, Raipur. The Industrial Court, reversed the order passed by the Labour Court, Durg on 15.04.1996 in case No. 115/MPIR/92 and dismissed the claim of the petitioner regarding correction of date of birth in his service records.

(2) The brief facts are that the petitioner, who was in employment of respondent No. 1, filed an application under

Sections 31 (3) read with 61 of MPIR Act before the Labour Court, Durg seeking a declaration that the alteration in his date of birth in service records from 20.07.1944 to 01.07.1939 be declared illegal and inoperative and the date of birth of the petitioner should be held as 20.07.1944 having a right to continue in employment upto 31.07.2002.

(3) The case of the petitioner is that he entered in to employment of respondent No. 1 on 20.07.1964. He declared his age as 20 years on 20.07.1964. Accordingly his date of birth was assessed as 20.07.1944 and the same was recorded in his service book. However, the petitioner came to know that his date of birth has been changed from 20.07.1944 to 01.07.1939. On enquiry, he could come to know that this date of birth, as 01.07.1939, was computed on the basis of an entry in the Employment Index Card. The petitioner made efforts with the company to correct his date of birth but the same was not done, therefore, the aforesaid case was filed before the Labour Court.

(4) In the written statement of respondent No. 1, the facts stated by the petitioner were denied. It was contended by them that no alteration or change in the date of birth has been made by the Company and in fact, the date of birth of the petitioner is mentioned as 01.07.1939 from the very beginning of his service on the basis of declaration of the petitioner in the Employment Index Card according to which he had declared himself to be aged about 20 years as on 01.07.1959 and his date of birth cannot be correct as 20.07.1944 as is claimed by the petitioner.

(5) The Labour Court after framing the issues in this matter, directed the parties to lead their evidence and after taking evidence of the parties, recorded a finding that the correct date of birth of the petitioner is 20.07.1944. The finding of the Labour Court was based upon the oral evidence of the petitioner and a certificate of the Gram Panchayat issued in favour of the petitioner in the year 1990 filed as Ex.-P/1. The Labour Court also recorded a finding that the entries of Employment Index Card, proved as Ex-D/1 by the respondent No. 1, were correct. These entries show that the petitioner had declared his age as 20 years on 01.07. 1959. On appreciation of evidence the Labour Court held that in fact, it was a declaration of his age as on 24.07.1964 and not on 01.07.1959. The Labour Court determined that there was no reason with the petitioner to declare his age on any back date, when he was entering in service in 1964 and the Index Card was being prepared in the year 1964. On these grounds, the Labour Court disbelieved the contents of the Index Card Ex.-D/1 and upheld the contention of the petitioner that in fact, he had stated his age as 20 years on the date of preparation of Index Card and not on 01.07.1959. The contents of certificate Ex.-P/1 were also held to be correct.

(6) Against the aforesaid order dated 15.04.1996 passed by the Labour Court, the employer filed an appeal before the Industrial Court. The Industrial Court set aside the findings of the Labour Court and dismissed the claim of the petitioner holding that the Labour Court erred in law by relying on the entries of certificate Ex.-P/1 without getting it proved by the petitioner in accordance with law. It was further held that the

entries of the Employment Index Card (Ex.D/1) were wrongly disbelieved by the Labour Court and the finding is perverse. In fact, the petitioner could not establish that his actual date of birth is 20.07.1944 and it was altered by the respondent as 01.7.1939. It is against this appellate order of Industrial Court, the present writ petition has been filed.

(7) Learned counsel for the petitioner submits that the Industrial Court was not justified in reversing the order and finding recorded by the Labour Court based on the oral evidence of the petitioner and the certificate of Panchayat filed by him as Annexure-P/1. He further submits that the entry of Ex.-D/1 should not have been believed by the Industrial Court and the date of birth of the petitioner should have been held as 20.07.1944. On the other hand, learned counsel for respondent No. 1 submits that the petitioner raised this dispute regarding his date of birth at the fag end of his service and the Industrial Court has rightly rejected the claims of the petitioner.

(8) I have heard the learned counsel for the parties at length and have also perused the records of the writ petition.

(9) It has been held by the Apex Court in the matter of ***Estralla Rubber v. Dass Estate (P) Ltd., reported in (2001) 8 SCC, page 97*** that 'the power under Article 227 can be exercised to interfere with orders of lower courts and Tribunals only in cases of serious dereliction of duty and flagrant violation of fundament principles of law or justice, where, in the absence of intervention by the High Court, grave injustice would remain unchecked and uncorrected'. The Apex

Court has further held that the findings of facts can be set aside by the High Court under Article 227, if findings are based on no evidence at all or are so perverse that no reasonable person could come to such conclusion. It has also been held in the matter of ***Sugarbai M. Siddiq and others v. Ramesh S. Hankare (dead) by L.Rs., reported in (2001) 8 SCC, page 477*** that in a petition under Article 227 of the Constitution, the High Court has to see whether the Lower Court or the Tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision making process.

(10) If we examine the case of the petitioner, it would appear that the petitioner had initially claimed that his date of birth entered in his service records as 20.07.1944 has been wrongly altered or changed as 01.07.1939. None of the documents have been filed before the Tribunal to show that in fact, any such alteration was made by the Company. The first document of entrance of service of the petitioner is the Employment Index Card which has been filed as Annexure-P/6. This document was also filed before the Tribunal as Ex.-D/1. If we look into the contents of this document, it would appear that in column No. 10 of this document an entry regarding the age on 01.07.1959 has been made. It has been entered into this column No. 10 that the age of the petitioner on 01.07.1959 was 20 years. The petitioner has not disputed this entry but he has raised a plea that in fact, this declaration was given by him thinking that he had to declare his age on 20.07.1964 and not on 01.07.1959. This contention of the

petitioner can not be accepted. Ex.-D/1 is the document which contains the complete details of the employee. This document bears the thumb impression and finger impressions of the petitioner. It is in prescribed proforma of the Company in which column No. 10 deals with the declaration regarding the date of birth of the employee or his age on 01.07.1959. It is in this column that the age of the petitioner has been mentioned as 20 years. The petitioner has not disputed the contents of this document. Rather he claims that he gave this declaration of 20 years thinking that he had to tell his age as on 20.07.1964. If we examine the evidence of the petitioner, it would appear that he has not supported this fact even by his own oral evidence. He has only said that on 20.07.1964, he got his age mentioned as 20 years in column No. 10 of the Employment Index Card. He has not stated that it was his age on 20.07.1964. On the basis of this evidence only, the Labour Court allowed the claim of the petitioner holding that he had told his age as 20 years on 20.7.1964 and not on 01.07.1959. In these facts and circumstances of the case, if the Industrial Court has reversed the finding of the Labour Court, then it could not be said that the same is erroneous. Rather it appears that the finding of the Labour Court was totally perverse and the Industrial Court has rightly reversed the same.

(11) Now coming to the contents of the birth certificate (Annexure-P/2), it would appear that the same was issued in the year 1990. This document has not been proved in accordance with law. Moreover, this document does not disclose as to what are the provisions under which this

certificate has been issued, whether this certificate has been issued under any statutory provision or the same has been issued on the request of the petitioner by Gram Panchyat. In fact, whether the certificate subsequently obtained by the petitioner in the year 1990 should be accepted and the date of birth entered therein should be taken as conclusive is essentially a question of fact. The determination of the question requires detail enquiry. The Apex Court has held in the matter of ***G.M. Bharat Coking Coal Ltd. West Bengal v. Shib Kumar Dushad and others reported in A.I.R. 2001 SC, page 72, Para-16*** that some of the relevant aspects to be considered in such a matter is whether such certificates have been issued by an authority competent to issue the same under any statute or statutory rules; whether the authority issuing the certificate is required under the statute or rules to enquire into the question of the date of birth of the person before issuing the certificate and on such inquiry the authority has found the date of birth to be as entered in the certificate or the entry has been made merely on the disclosure made by the holder of the certificate. In the present case also, all these facts have not been clarified by the Labour Court and the Labour Court held this certificate to be proved only on evidence of the petitioner. The Industrial Court has rightly not accepted the contents of this document (Ex.-P/1) to be conclusive for holding the date of birth of the petitioner as 20.07.1944 and on these grounds also, the finding of the Labour Court has rightly been reversed.

(12) On the basis of the foregoing discussion and also on the basis of the material placed before this Court, I do not feel

that the finding recorded by the Industrial Court is either perverse or is based upon no material on record warranting interference by this Court under Article 226 or 227 of the Constitution of India. The petition has no merits and the same is dismissed. However, in the facts and circumstances, there shall be no order as to costs.

Sd/-
Sunil Kumar Sinha
Judge

08-08-2005

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